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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

In re JESSE S., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,
Plaintiff and Respondent,
v.
JESSE S.,
Defendant and Appellant.

A154550

(Humboldt County
Super. Ct. No. JV140096)

Following appellant's admission that he committed felony assault against a juvenile corrections officer, the juvenile court committed him to the Division of Juvenile Justice (DJJ). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Before considering the underlying case, we first summarize appellant's prior juvenile history.

Appellant became a ward of the juvenile court on August 6, 2014, after he admitted committing two misdemeanor offenses: being under the influence of marijuana (Pen. Code,¹ § 647, subd. (f)) and receiving stolen property, a check (§ 496, subd. (a)).² He was placed with his grandmother.

¹ All statutory references are to the Penal Code unless otherwise indicated.

² As to the receiving stolen property offense, the record does not reflect whether appellant admitted he committed a misdemeanor or felony. We assume appellant

Over the next 11 months, appellant was charged with a series of probation violations under Welfare and Institutions Code section 777, involving possession and use of marijuana, failing to attend school, disobeying directives of his probation officer, parent, or school official, absconding from home, failing to refrain from the use of intoxicating substances, and violating a non-association order. As to each probation violation, the court retained appellant as a ward and continued his placement with his grandmother/grandparents.

In August 2016, appellant was charged with multiple misdemeanor offenses and probation violations. After he admitted a misdemeanor violation of obstructing or delaying a peace officer (§ 148, subd. (a)(1)), the court committed him to the Northern California Regional Treatment Facility for placement at New Horizons “to participate in and complete the intensive treatment services provided for up to six months.”

Appellant was expected to complete the New Horizons program in February 2017; however, on November 11, 2016, he “absconded on his first therapeutic pass.” A police officer took appellant back to the program the following day. Appellant again absconded from New Horizons on December 25, 2016. A petition pursuant to Welfare and Institutions Code section 777 was filed alleging appellant violated his probation, and a warrant for his arrest was requested. When appellant was arrested on the warrant two months later and “came back into custody,” he appeared to be “highly under the influence of intoxicating drugs,” and he reported that while he was out of custody, he used methamphetamine, marijuana, and alcohol.

In the instant matter, on May 3, 2017, appellant and another detained minor assaulted the victim, a juvenile correctional officer at the regional facility in Humboldt County. Appellant believed he heard the correctional officer talking “ ‘shit’ ” about his deceased brother. Prior to the assault, appellant asked another correctional officer whether the victim was talking about his brother. The second correctional officer

admitted misdemeanor receiving stolen property because he took a check from an elementary school.

informed appellant that he “had heard wrong” because the victim was a “fairly new” correctional officer and had no knowledge of appellant’s brother. Several minutes later, however, appellant and another minor ran towards the victim yelling profanities and threats, and appellant punched the victim on the left side of his face. The victim was able to take appellant to the ground where they wrestled, but appellant was able to stand up and continued to punch the victim on the back of his head. Additional correctional officers eventually restrained appellant.

A juvenile wardship petition was filed alleging numerous felonies and misdemeanors. After admitting one count of assault by means likely to produce great bodily injury (§ 245, subd. (a)(4)), on condition he would not be sent to the DJJ, the juvenile court retained appellant as a ward and ordered him to enroll and successfully complete an inpatient residential treatment program as directed by his probation officer.

On August 1, 2017, appellant entered the Humboldt Recovery Center at 10:30 a.m. and left the program at 8:02 p.m. Appellant turned himself in on a warrant in late October.

Based on his absconding from the Humboldt Recovery Center, in November 2017, appellant admitted he violated probation. Following a contested disposition hearing, the court committed appellant to the DJJ for a 90-day period of observation and diagnosis.

The DJJ evaluated appellant and prepared a diagnostic evaluation report for the juvenile court’s review. The report discussed appellant’s unstable family life: he was placed in foster care at the age of three because his mother allegedly molested him; he and his brother were removed from foster care due to allegations of sexual abuse; and after he was returned to his mother, he lived intermittently between his mother and maternal grandmother, characterizing his time with his mother as unstable.

Upon completion of the 90-day evaluation, the clinical psychologist diagnosed appellant with antisocial personality disorder and substance abuse disorders. The psychologist concluded appellant would “greatly benefit from the structure and treatment offered at DJJ” because “[i]t is unlikely he would receive the level of supervision that he needs in the community, and he has already exhibited significant resistance to a program

offered to him in the community.” According to the psychologist, appellant’s substance abuse “would be controlled and his negative behaviors would be positively impacted by the [DJJ’s] structured environment.” In addition to individual and group counseling, the DJJ recommended various programs directed at appellant’s behavioral issues and substance abuse.

After considering the 90-day DJJ evaluation report, the probation department recommended that appellant be committed to the DJJ to address “his mental health and substance abuse concerns.” Defense counsel filed a motion in opposition to a DJJ commitment, arguing the court should “[t]ake a chance” and terminate appellant’s probation to allow his uncle to mentor him.

At the commencement of the contested disposition hearing, the court found appellant should be committed to the DJJ because he had exhausted community services aimed at rectifying his behavior. Once the hearing was completed, the court found appellant would benefit “by the reform for education or discipline or other treatment provided by the Division of Juvenile Justice,” committed him to the DJJ, and recommended he be placed in a substance abuse program and intensive treatment program. The court set the maximum term of three years with 305 days’ credit for time served.

Appellant filed a timely appeal challenging his commitment to the DJJ.

DISCUSSION

Appellant’s counsel has filed a brief setting forth the facts of the case but advising the court under the authority of *People v. Wende* (1979) 25 Cal.3d 436, no issues were found to argue on appellant’s behalf. Counsel has also apprised us in her declaration that she has notified appellant he can file a supplemental brief with this court. No supplemental brief has been received.

Pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, we have independently examined the record to see if any arguable issue is present. We have found none.

Before appellant admitted the probation violation of absconding from the Humboldt Recovery Center, he was advised of the direct consequences and constitutional

rights he would be waiving. Appellant waived the enumerated constitutional rights and voluntarily admitted the probation violation allegation.

Appellant was ably represented by counsel. Counsel filed a written objection to the probation department's recommendation that appellant be committed to the DJJ and continued to argue against the DJJ recommendation at the disposition hearing, requesting that the court terminate appellant's probation and allow his uncle to mentor him.

The juvenile court, moreover, did not abuse its discretion at the disposition hearing by committing appellant to the DJJ. As the court succinctly stated, "the minor should be committed to the Division of Juvenile Justice for a period of time [and] he's exhausted community efforts to rectify his behavior to treat his underlying issues, including alcohol and drug abuse and possibly some psychological issues." As we have summarized, appellant left his grandmother's residence after being placed there, and then he absconded from New Horizons on his first therapeutic pass. Following his return to this program, he absconded again. And lastly, while he was detained at the regional facility, he and another minor viciously assaulted a correctional officer. Having unsuccessfully placed appellant in less restrictive alternatives, the juvenile court reasonably believed the DJJ, with its multiple structured programs, would benefit appellant by focusing on his troubled behavior and substance abuse problem in a secure setting.

We therefore agree with appellant's counsel that no issues are present undermining appellant's admission or the disposition.

Accordingly, the dispositional order is affirmed.

Margulies, J.

We concur:

Humes, P. J.

Banke, J.

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In re Jesse S.